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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2430/2014*, **

Communication submitted by:	Khudirnazar Allakulov (not represented by counsel)
Alleged victim:	The author
State party:	Uzbekistan
Date of communication:	9 September 2011 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 20 June 2014 (not issued in document form)
Date of adoption of Views:	19 July 2017
Subject matter:	Quashing of final decisions clarifying the enforcement of a court decision in the author's favour
Procedural issues:	Substantiation; exhaustion of domestic remedies
Substantive issues:	Right to a fair trial and to equality before courts; legal certainty; right to an effective remedy; freedom of expression; right to privacy; right to non-discrimination
Articles of the Covenant:	2, 3, 7, 14, 17, 19 and 26
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is Khudirnazar Allakulov, a national of Uzbekistan born in 1956. He claims that the State party has violated his rights under articles 2, 3,[1] 7, 14, 17, 19 and 26 of the Covenant. The Optional Protocol entered into force for Uzbekistan on 28 September 1995. The author is not represented by counsel.

* Adopted by the Committee at its 120th session (3-28 July 2017).

** The following members of the Committee participated in the examination of the present communication: Tania Maria Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

[1] The author merely refers to article 3 along with the other Covenant provisions in his initial submission, without formulating any claim under article 3.

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The facts as submitted by the author

2.1 The author is a university professor. In 2002, he was appointed rector of Termez State University, in Uzbekistan. In 2004, criminal proceedings were brought against him on charges of large-scale fraud in connection with his position. On 20 May and 28 September 2004, a major national newspaper, *Uzbekiston Ovozi (Uzbekistan's Voice)*, published two defamatory articles about the author, entitled "Halva for the rector and assaults on students", calling him a "thief", a "crook", a "criminal" and "the main culprit" and accusing him of defrauding the university of budgetary resources. As a result of the publication of the articles, the author's reputation was affected, and his employment contract was terminated on 17 June 2004. On 23 February 2006, the author was acquitted of fraud by Dekhkanabad District Court. On 19 April 2006, Kashkadarinskiy Regional Court upheld that decision on appeal. On 20 April 2006, Dekhkanabad District Court addressed a letter to the Prime Minister and the Minister of Education, referring to the need to restore the author's honour, dignity and professional reputation, which had been affected by the criminal proceedings and the publication of the articles. However, no action was taken by the authorities. On 9 August 2006, the Supreme Court quashed the decision of 19 April 2006 and remitted the case for new consideration. On 5 June 2007, Bukharskiy Regional Court affirmed the decision of 23 February 2006 of Dekhkanabad District Court.

2.2 On 19 June 2008, the author submitted a claim to Shykhantakhursky District Court, of Tashkent, asking to reinstate him in his position. On 28 August 2008, the court dismissed his claim as time-barred. On 26 September 2008, Tashkent City Court upheld the decision on appeal. The author's numerous applications for supervisory review — on 13 November 2008, 25 February 2009, 5 June 2009, 27 August 2009, 12 October 2009, 29 October 2009, 20 November 2009 and 22 February 2010 — were left without consideration.

2.3 In the meantime, on 3 July 2006, the author requested *Uzbekiston Ovozi* to publish a retraction of the articles. On 3 August 2006, the newspaper refused to publish such a retraction. On 30 June 2008, the author sued the newspaper before Mirabadsky District Court, in Tashkent, asking for a retraction to be published and providing a retraction text. On 12 November 2008, the district court granted his claim and ordered that the newspaper publish the following retraction text: "The *Uzbekiston Ovozi* newspaper and its main editor presents apologies to the (former) rector of Termez State University, Mr. Allakulov, since the information, opinions and reflections relating to his abuse of office, negligence, fraud, violation of budget regulations and overall guilt, that were provided in the newspaper articles of 20 May and 28 September 2004 (titles indicated), have not been confirmed." On 16 January 2009, Tashkent City Court found that the district court had attempted to give a legal assessment of the actions of the main editor and had changed the operative part of the 12 November 2008 decision. The district court had removed reference to the editor and did not specify what text must be used in the retraction. It ordered that the newspaper publish a retraction in its next issue on the grounds that the information, opinions and reflections contained in the disputed articles had not been confirmed.

2.4 On 16 July 2009, the newspaper published a 10-line retraction in a 7 x 8 cm frame, without even mentioning the author's name. The retraction read: "Based on Tashkent City Court's decision of 16 January 2009, RETRACTION: As information, opinions and arguments expressed in the articles published on 20 May 2004 and on 29 September 2004 have not been confirmed, the *Uzbekiston Ovozi* newspaper is publishing a retraction." In the same issue, the newspaper published an article criticizing the author's acquittal and the court decisions of 12 November 2008 and 16 January 2009, as well as the failure of the Supreme Court to seek a supervisory review of those decisions.

2.5 On 16 July 2009, the Mirabadsky District Bailiffs' Service requested the President of Tashkent City Court to clarify whether the retraction published by the newspaper could be considered as the enforcement of the decision of 16 January 2009. By a decision of 11 September 2009, Tashkent City Court responded that the retraction could not be considered as the enforcement of its decision of 16 January 2009 and clarified that the retraction should be based on the text provided by the author or drafted in coordination with him, the latter in the event that the volume of the text and time of the transmission of the text provided by the author caused damage to the activities of the newspaper. On 2 October 2009, the Mirabadsky District Bailiffs' Service requested that the newspaper publish the author's

retraction text immediately, with reference to Tashkent City Court's decision of 11 September 2009, to article 34 (right to retraction and response) of the Law on Mass Media and to article 232 of the Criminal Code establishing criminal liability for non-enforcement of court decisions. However, the newspaper did not comply with the request and, instead, filed a procedural appeal against the decision of 11 September 2009 before Tashkent City Court, which rejected it on 13 October 2009. On 5 October 2009, the Bailiffs' Service requested that the Tashkent Prosecutor's Office initiate criminal proceedings against the management of the newspaper for its failure to execute the court decisions. No such action was taken by the prosecuting authorities.

2.6 On 30 October 2009, the Tashkent City Prosecutor requested the Presidium of Tashkent City Court to quash the decisions of 11 September and 13 October 2009.[2] On 24 December 2009, the Presidium of Tashkent City Court quashed the decisions.[3] The author's applications for a supervisory review of the 24 December 2009 decision — made on 27 January, 19 February and 3 May 2010 — were left without consideration.

2.7 The author claims that he has exhausted all available domestic remedies.

The complaint

3.1 With regard to the proceedings relating to the author's reinstatement, the author complains about the outcome of the proceedings and that the domestic courts were biased and erred in the assessment of evidence. He refers to articles 2 (1), 14 (1), (2) and (3) (e) and 26 of the Covenant.

3.2 With regard to the proceedings relating to the publication of the retraction, the author claims that they were unfair and that the authorities involved therein lacked independence. He explains that despite his acquittal, his honour, dignity and professional reputation were not restored, particularly due to the quashing by the Presidium of Tashkent City Court of the decisions of 11 September and 13 October 2009 by which Tashkent City Court clarified that the retraction should be based on the text provided by the author. The author claims that these two decisions had become final and therefore, by quashing them, the Presidium violated his rights under articles 7, 14 (1) and (2) and 17 of the Covenant.

3.3 The author also claims that the newspaper, by the fact of the impugned articles and the failure to publish his retraction text, breached his rights under article 19 of the Covenant, because it overstepped the restrictions placed on its freedom to impart information and disregarded the requirement under article 19 (3) (a) to respect his rights and reputation.

State party's observations

4.1 By a note verbale dated 27 August 2012, the State party submitted observations arguing that the author's claims were unsubstantiated.

4.2 According to the State party, on 14 June 2004 the author submitted a resignation letter whereby he resigned from the position of rector of Termez State University of his own free will. On 17 June 2004, his contract was terminated. According to article 99 of the Labour Code, the author could have withdrawn his resignation within two weeks after its submission but he did not do so. Neither did the author initiate court proceedings for

[2] According to the decision of 30 October 2009, on file in Uzbek, the Prosecutor requested the decisions of 11 September 2009 and 13 October 2009 to be quashed on the grounds that the court had failed to consider the case "comprehensively" (всесторонне), thoroughly and objectively and to make a proper assessment of the evidence. Furthermore, the Prosecutor noted that the court had incorrectly interpreted Civil Procedure Code articles 312 (grounds for annulment or amending a court decision) and 313 (violation or incorrect application of law). In particular, the court should have simply clarified its decision of 16 January 2009, instead of issuing a new one. It was up to the Bailiffs' Service, and not the court, to decide whether the retraction published on 16 July 2009 constituted enforcement of the court decision of 16 January 2009. In case of its non-enforcement, the author could have filed a complaint against the bailiffs.

[3] According to the decision of 24 December 2009, on file in Uzbek, the Presidium of Tashkent City Court granted the Prosecutor's request for quashing, on the ground that the court should have provided clarifications of its decision without changing the decision itself.

reinstatement within one month of receiving a copy of the decision to terminate his contract, as provided for under article 270 of the Labour Code. It was not until 23 June 2008 that the author filed an action for reinstatement, that is, four years after his dismissal. As he failed to provide valid reasons why he had missed the deadline, the domestic courts rejected his claim. As to his claim against *Uzbekiston Ovozi*, the domestic courts found in his favour. The newspaper published a retraction on 16 July 2009.

4.3 On 6 November 2014, the State party reiterated its observations with regard to the proceedings concerning the author's reinstatement and the newspaper articles. It refutes the author's complaint about the alleged unfairness of the court proceedings and unlawful acts of the Prosecutor-General's Office and refers to legal provisions establishing the separation of powers in Uzbekistan. The author's complaint was transferred to the Ministry of Justice by the Ministry of Internal Affairs and further to the Supreme Court and the Prosecutor-General's Office[4] — the representatives of which form part of the inter-agency working group on monitoring human rights implementation, pursuant to the regulation of 23 July 2012. The State party details the tasks and structure of the inter-agency working group. The author's complaint was forwarded to the Supreme Court and the Prosecutor-General's Office because it did not fall within the competence of the Ministry of Justice. The State party denies that the Ministry of Justice provided guidance to these authorities regarding the author's claims.

4.4 On 10 February 2015, the State party reiterated its position that the author's claims lacked substantiation. With regard to the decision of 24 December 2009 of the Presidium of Tashkent City Court to quash the court decisions of 11 September 2009 and 13 October 2009 specifying how to enforce the decision of 16 January 2009, the State party submits that the case was remitted for new consideration on appeal. Subsequently, on 29 January 2010, Tashkent City Court rejected the bailiff's request for clarifications.[5] The author has not challenged the decision of 29 January 2010 by submitting a procedural appeal.

4.5 On 2 July 2015, the State party recalled the domestic proceedings with regard to the newspaper articles. It reiterates that the author has not submitted a procedural appeal against the court decision of 29 January 2010. It adds that the writ of execution was returned to the court further to the enforcement of the court decision of 16 January 2009, that is, by the publication of the retraction on 16 July 2009.

Author's comments on the State party's observations

5.1 On 8 September 2014, the author challenged the State party's observations as inaccurate and lacking impartiality. On 24 July 2014, the Ministry of Justice forwarded his complaint, without having considered it, to the Supreme Court and the Prosecutor-General's Office, asking them to provide conclusions as to its inadmissibility. The Ministry of Justice also requested the Supreme Court and the Prosecutor-General's Office to provide a "rebuttal of the author's unsubstantiated claims, for subsequent transmittal to the Ministry of Internal Affairs". The author claims that such instructions are unfair.

5.2 The author adds that he was forced to resign, under pressure from the Prosecutor-General's Office. As the Prosecutor-General's Office had initiated criminal proceedings against him, it acted to prevent his reinstatement. The author explains that, as a rector, he identified, and took measures against, a number of students who had entered the university without a passing grade only because they were close relatives of civil servants and employees of the Prosecutor's Office. He also identified cases of corruption and fraud among university staff, which were covered up by prosecuting authorities and administrative courts. As the author had refused to follow instructions of the authorities to reinstate such students and staff, criminal proceedings were brought against him; he was, in particular, accused of enrolling "unqualified" students and delivering fake diplomas to them. In his acquittal, the court noted that the author, on the contrary, had taken measures to eradicate such cases.

[4] In response to the author's submissions in para. 5.1.

[5] See para. 2.5 above.

5.3 The author also explains that in his resignation letter, he asked to be provided with another job, which was not done. His resignation was addressed to a deputy Prime Minister, and not to the President who decides on the appointment of university rectors. His resignation was nevertheless brought to the attention of the President, who approved it. As he was acquitted, there are no grounds for his dismissal. However, despite his acquittal, his dismissal, signed by the President, remains in force, as the domestic courts would not challenge a presidential decision. This shows that he was denied justice by the courts. The courts rejected his motion to invite the Deputy Prime Minister and the Minister of Education as parties to the proceedings. The courts also rejected statements by eight witnesses who confirmed that he had been forced to resign. This shows that the court proceedings were unfair and that the author was discriminated against by the domestic courts on political grounds.

5.4 The author adds that the quashing of the final court decisions of 11 September and 13 October 2009 by the Presidium of Tashkent City Court, upon request of the Tashkent City Prosecutor, also constitutes a denial of justice. At the same time, the Prosecutor-General's Office rejected his request to quash the court decisions that were not in his favour.

5.5 As a result of the unfair court proceedings, the author remains unemployed and his reputation is adversely affected.

5.6 On 6 October 2014, the author reiterated his disagreement with the position of the State party on the merits of his communication. He claims that the State party's arguments lack substantiation. The author explains that on 14 June 2004, the Minister of Education requested him to submit his resignation to the deputy Prime Minister on the grounds that criminal proceedings had been brought against him and that the critical articles about him had been published. The Minister of Education emphasized that the request emanated from the President and that the author and his family would have problems if he did not comply. That is how the author was forced to resign. Three witnesses on the author's behalf[6] appeared before the domestic courts. Six witnesses altogether, including the deputy Prime Minister, submitted written statements to the court. According to the Resolution of the Presidium of the Supreme Court of 17 April 1998 (para. 11, hereinafter "the Resolution"), the sole ground for termination of an employment contract is an employee's written submission reflecting his or her genuine will to terminate it. According to article 15 of the Resolution, the domestic courts should thoroughly examine the employee's allegations of forced resignation by the employer. The author submits that by finding against him, the domestic courts ignored the Resolution and did not give due consideration to the witness statements, and that the court decisions contradict witness statements. By rejecting his motions to summon the deputy Prime Minister and the Minister of Education as witnesses, the courts breached the principle of equality and discriminated against the author, contrary to articles 2 (1) and (3) (a) and (b), 14 (1) and (3) (e) and 26 of the Covenant.

5.7 The author submits that he was deprived of the right to withdraw the resignation within two weeks in accordance with the Labour Code since his contract was terminated only three days after he submitted his resignation notice. Terminating an employment contract before the term of two weeks without the employee's consent contradicts the Resolution and is a ground for reinstatement. Kashkadarinskiy Regional Court did not take into account the 20 April 2006 letter issued by Dekhkanabad District Court further to his acquittal. The author challenges the court's conclusion that he had missed the one-month deadline to challenge the decision to terminate his contract. He explains that he was never provided with a copy of the decision to terminate his contract and submits a confirmation by the university's head of human resources to that effect; he claims that he saw the decision for the first time in court on 28 August 2008. Furthermore, the decision to terminate his contract was not duly recorded by the Cabinet of Ministers and he was laid off during his annual leave, in breach of domestic law. Therefore, the court decision of 28 August 2008 to refuse his application for reinstatement as time-barred is unlawful, violates articles 2 (3) (a) and (b) and 14 (1) of the Covenant and constitutes discrimination in favour of the Cabinet of Ministers.

[6] The author submits that the three witnesses learned what had happened from him. They were not present at his conversation with the Minister.

5.8 The author also reiterates his claim relating to the defamatory newspaper articles about him. He claims that his reputation was damaged so much that he lost his job, became a social outcast and was excluded from professional clubs, and that it had negative consequences within his family. The prosecutor's office used the articles as proof of his involvement in the crime that he had been accused of. The case against him was considered by 14 courts across the country and the proceedings lasted over three years. The author challenges the State party's reference to the retraction of 16 July 2009, as the retraction did not even mention his name. On 11 September 2009, Tashkent City Court responded that the retraction could not be considered as the enforcement of its decision of 16 January 2009 and that the newspaper should publish the author's retraction text. The author reiterates that by quashing the decisions of 11 September 2009 and 13 October 2009, on supervisory review initiated at the request of the Tashkent City Prosecutor, the Presidium of Tashkent City Court breached domestic law, acted arbitrarily and denied him justice, in violation of articles 2 (3) (a) and (b), 7, 14 (1), 17, 19 (2) and 26 of the Covenant. He was denied any opportunity to rehabilitate his reputation, honour and dignity for his sake and that of his family. Citizens of Uzbekistan are unaware of his acquittal and this situation can be changed by a simple publication of the retraction in the newspaper. He requests that his retraction text be published.

5.9 On 22 December 2014, the author submitted that his health had deteriorated as a result of his involvement in court proceedings for over 11 years, and that he had incurred financial loss and become a burden to his family. His sons had lost jobs for unrelated reasons and were deserted by their wives, which increased his moral suffering. The author also challenges the State party's submissions of 27 August 2014 and 6 November 2014 as unsubstantiated.

5.10 On 17 March 2015, the author contested the State party's submission of 10 February 2015. He submits that he did challenge the decision of Tashkent City Court of 29 January 2010, as well as the decision of the Presidium of Tashkent City Court of 24 December 2009, by submitting an application for supervisory review on 11 February 2010, which was rejected by the Supreme Court on 19 February 2010. In another supervisory review application, the author sought the Prosecutor-General's intervention to quash the court decision of 29 January 2010. On 3 May 2010, the Prosecutor-General rejected his application. The Supreme Court and the Prosecutor-General found that there was no reason for changing or quashing the court decision.

5.11 In his applications, he claimed that the domestic courts overstepped their competence. First, although the Tashkent City Prosecutor requested to quash the 11 September 2009 and 13 October 2009 decisions and terminate the proceedings, the Presidium of Tashkent City Court went beyond the Prosecutor's request and remitted the case for new consideration on appeal. According to article 357 of the Civil Procedure Code, supervisory review is limited by the scope of the request, and cannot be overstepped unless the rights and interests of other persons are violated. This was not the author's case. Second, in the decision of 29 January 2010, Tashkent City Court found that the bailiff should not have sought clarifications as to the enforcement of the 16 January 2009 decision and should have enforced it instead according to the law on law enforcement; parties to the proceedings could have subsequently challenged the enforcement. The author refers to article 215 of the Civil Procedure Code, which provides that when a court decision is unclear, domestic courts that issued the decision are entitled to clarify it without changing its content, including at the bailiffs' request. Clarifications are allowed in relation to enforceable court decisions that have not been enforced. By instructing the bailiffs not to seek clarifications relating to the enforcement of the court decision, the court interfered with the bailiffs' area of competence.

5.12 On 10 February 2010 and 2 June 2011, the Mirabadsky District Bailiffs' Service informed the author that the enforcement proceedings in relation to the decision of Tashkent City Court of 16 January 2009 and the article published on 16 July 2009 had not been finalized due to the absence of clear instructions on the enforcement. The author claims that the retraction text, as indicated in the court decision of 16 January 2009, should be published in the *Uzbekiston Ovozi* newspaper in order to ensure his enjoyment of article 19 rights.

5.13 On 11 August 2015, the author challenged the State party's submission that the 16 January 2009 decision had been enforced. He appends a letter from the Department on Execution of Court Decisions, of the Ministry of Internal Affairs, dated 28 July 2015, according to which the enforcement of the 16 January 2009 decision has not been and could not be ensured, since the court refused to provide clarifications on its enforcement, notably on the content of the retraction, and rejected the bailiff's appeals in relation to the court decision of 29 January 2010. Therefore, no decision has been taken with a view to terminating the enforcement proceedings and the writ of execution has not been returned to the court.

5.14 On 11 August 2015, 25 January 2016, 5 September 2016 and 15 November 2016, the author reiterated his request for priority consideration of his communication by the Committee on health grounds.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

6.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

6.3 The Committee notes the author's claims invoking articles 2 (1) and (3) (a) and (b), 14 and 26 of the Covenant concerning the dismissal as time-barred of his claim to reinstate him in his position as rector of the Termez State University, in that the author was denied the right to a fair trial on political grounds. The Committee recalls its jurisprudence that it is not a final instance competent to re-evaluate findings of fact or the application of domestic legislation, and that it is generally up to the courts in States parties to review facts and evidence or the application of domestic legislation in a particular case, unless the evaluation was clearly arbitrary or amounted to a denial of justice, or the court failed in its duty of independence and impartiality.[7] In the present case, the Committee takes note of the author's arguments that he was forced to resign under pressure from the authorities, that procedural formalities for resignation were not respected and that domestic courts discarded witness statements in his support. The Committee also takes note of the State party's submission and the reasoning behind the decisions of the domestic courts that the author's allegations lack substantiation, that he did not comply with the legal one-month deadline for initiating judicial proceedings for reinstatement after receiving a copy of the decision to terminate his contract and that he filed an action for reinstatement only four years after his employment contract was terminated. The Committee also notes the author's argument that he had missed the deadline because he was never provided with a copy of the decision to terminate his contract and that he saw that decision for the first time in court, on 28 August 2008, when his claim was rejected in the first instance. The Committee observes, however, that the material on file does not show that the author sought to obtain the written decision when it was handed down or any time later on, or that the absence of a written decision prevented him from filing the reinstatement claim soon after his dismissal. In the light of the information available on file, the Committee considers that the author has failed to demonstrate that, in dismissing his reinstatement claim due to failure to respect the time limit, the courts evaluated the evidence before them or applied domestic legislation in an arbitrary manner, that their decisions amounted to a denial of justice, or that they lacked independence and impartiality. The Committee therefore concludes that the author's claims

[7] See, for instance, communications No. 541/1993, *Simms v. Jamaica*, decision of 3 April 1995, para. 6.2; No. 1138/2002, *Arenz and others v. Germany*, decision of 24 March 2004, para. 8.6; No. 917/2000, *Arutyunyan v. Uzbekistan*, Views adopted on 29 March 2004, para. 5.7; No. 1528/2006, *Fernández Murcia v. Spain*, decision adopted on 1 April 2008; No. 1963/2010, *T.W. and G.M. v. Slovak Republic*, decision adopted on 25 March 2014, para. 8.3; and No. 2145/2012, *Zakharov v. Kazakhstan*, decision of inadmissibility adopted on 28 March 2017, para. 11.5.

have not been sufficiently substantiated and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.4 The Committee also notes the author's claims under articles 19 and 26 of the Convention. In the absence of further pertinent information from the author, however, the Committee concludes that these claims have not been sufficiently substantiated, and declares this part of the communication inadmissible under article 2 of the Optional Protocol.

6.5 The Committee notes the author's claims relating to the retraction of two newspaper articles containing fraud accusations against him. Those claims concern the quashing on supervisory review, by the Presidium of Tashkent City Court, of that court's final decisions dated 11 September 2009 and 13 October 2009, which were aimed at clarifying the enforcement of its 16 January 2009 decision concerning the content of the retraction. The claims also concern the fact that after the quashing, Tashkent City Court refused to provide guidance on the enforcement of its decision of 16 January 2009, which rendered that decision virtually unenforceable. The Committee considers that this part of the communication raises issues under article 14 (1) read in conjunction with article 2 (3) of the Covenant, as well as under article 17, read alone and in conjunction with article 2 (3).

6.6 The Committee notes that the State party has not provided observations on the author's claim about the quashing on supervisory review of Tashkent City Court decisions. It also notes the State party's challenge to the author's claims in relation to the Tashkent City Court decision of 29 January 2010 on the ground that he has failed to exhaust domestic remedies by not filing a procedural appeal against the decision. On the latter point, the Committee notes that the State party has not provided further details about the procedural appeal procedure and whether it would offer effective relief to the author in the circumstances. The Committee also notes that the author filed two applications for supervisory review of the 29 January 2010 decision, which were rejected by the Supreme Court and the Prosecutor-General. In these circumstances, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining this part of the communication. It therefore declares it admissible and proceeds with its consideration of the merits.

Consideration of the merits

7.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

7.2 The Committee notes the author's allegations that the retraction published on 16 July 2009 did not specify his identity and did not contain specific reference to the newspaper articles which were subject to retraction and that an article criticizing the author's acquittal and the court decision of 16 January 2009 was published in the same issue. The Committee also notes that the Presidium of Tashkent City Court quashed the decisions of 11 September 2009 and 13 October 2009 by which the City Court had determined that the retraction published on 16 July 2009 was not in compliance with the Law on Mass Media, according to which the content of the retraction should have been provided by the author or edited in coordination with him, and that, later on, the City Court refused the bailiff's request to provide clarifications on the contents of its decision. The author claims in this respect that the courts acted arbitrarily and denied him justice, in violation of the right to a fair hearing under article 14 (1) read together with article 2 (3) of the Covenant.

7.3 The Committee observes that the refusal by the City Court to issue a clarification on the conformity of the retraction with its previous decision, of 16 January 2009, was detrimental to the execution of this decision, which, to date, remains unimplemented. In this respect, no observations to the contrary have been submitted by the State party.

7.4 The Committee also observes that the Tashkent Prosecutor's Office, while not a party to the proceedings in relation to the retraction of the defamatory articles about the author, requested the Presidium of Tashkent City Court to quash the decisions of 11 September 2009 and 13 October 2009. This request was made on the basis of articles 349 and 350 of the Civil Procedure Code, which allowed the Prosecutor to request the quashing

of a court decision by way of supervisory review up to three years after such a decision became final.[8] As a result, on 24 December 2009, the Presidium quashed the decisions of 11 September 2009 and 13 October 2009. Furthermore, it was not open to the author to challenge either the Prosecutor's request for the decision to be quashed, or the decision of the supervisory review court to entertain the request.

7.5 The Committee considers that, as applied in the present case, the supervisory review procedure created a situation of legal uncertainty for the author, and that the quashing of the decisions clarifying the execution of the 16 January 2009 decision rendered its execution impossible in practice. In the absence of explanations by the State party, the Committee considers that the situation where the final court decisions were quashed by way of supervisory review proceedings, through the interference of prosecuting authorities, for which no explanation had been provided, cannot be considered as being consistent with the right to a fair hearing by an independent and impartial tribunal, under article 14 (1) read together with article 2 (3) of the Covenant.

7.6 The Committee notes the author's allegations that he was denied any opportunity to rehabilitate his reputation, honour and dignity and that of his family. In this regard, the Committee recalls that article 17 affords protection in respect of personal honour and reputation and that States are under an obligation to provide adequate legislation to that end. Provision must also be made for everyone to be able to protect himself or herself effectively against any unlawful attacks that do occur and to have an effective remedy against those responsible.[9] In the present case, the Committee notes that the Presidium's quashing of the decisions of 11 September 2009 and 13 October 2009 deprived the author of the possibility to rehabilitate his reputation, honour and dignity, thus violating his rights under article 17 of the Covenant, read alone and in conjunction with article 2 (3).

8. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the facts before it disclose a violation by the State party of article 14 (1) read together with article 2 (3), and of article 17, read alone and together with article 2 (3), of the Covenant.

9. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires it to make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation to, inter alia, (a) provide the author with adequate compensation, including for lost earnings and damage to his reputation, legal costs involved in litigation and the violation of his rights as stated in the present Views; and (b) provide the author with appropriate measures of satisfaction with a view to restoring his reputation, honour, dignity and professional standing, in line with the City Court decision of 16 January 2009. The State party is also under an obligation to take steps to prevent similar violations from occurring in the future.

10. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's Views. The State party is also requested to publish the present Views and to have them translated into the official languages of the State party and widely distributed.

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[8] Article 349 of the Civil Procedure Code then in force reserved such a right to the Chairperson of the Supreme Court and the Prosecutor-General, as well as to their deputies and the prosecutors of several cities and regions. Article 350, then in force, allowed requests for quashing up to three years after decisions became final. On 29 March 2017, that time frame was reduced to one year.

[9] See the Committee's general comment No. 16 (1988) on the right to privacy, para. 11.